IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 332 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

GOVINDBHAI KESHAVLAL THAKKER

Versus

SAMASTA LUHANA GNATI REGD. TRUST

---

Appearance:

MR AKSHAY H MEHTA for Petitioner

MR SATYEN B RAWAL for Respondent No. 1

M/S THAKKAR ASSOC. for Respondent No. 2, 3, 4, 5, 6, 7, 8, 9,10,11,12

---

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. This revision application has been filed by the original defendant, against whom the opponents herein have filed a suit, being Civil Suit No.192 of 1996, in the court of Civil Judge (Senior Division), at Surendranagar. The case of the present opponents-original plaintiffs in the suit is that plaintiff No.1 is a registered Trust and the property in question is used for social and religious activities. That the defendant was employed by the Trust in their

service to look after the Trust property and by virtue of his employment, he was given one room as a licensee of the left side portion of the suit premises. The defendant was to hand over the possession on the termination of his services. It is the case of the plaintiffs that the defendant resigned on 3.8.1996 by voluntarily handing over his resignation. Still, however, he has continued the use of the said room and he is not vacating the same. It is averred in paragraph 8 in the plaint that the possession of the defendant is that of a trespasser and in spite of notice given on 28.10.1996, asking the defendant to hand over the possession, he has continued the possession and, therefore, the aforesaid action of the defendant is an illegal act of trespass and, therefore, the said suit has been filed for a declaration and injunction. It is said that the defendant continued to illegally occupy the premises since last four months and the activity of the defendant amounts to trespass over the property of the plaintiffs, which is required to be prevented. It was prayed that during the pendency of the suit, the defendant may be restrained from continuing his activity of trespass so far as the suit premises is concerned.

2. The trial court, initially, granted ad interim order, by which the defendant was restrained from entering the suit premises. Thereafter, after hearing both the sides, by the order dated 21st January, 1997, the trial court rejected Exhibit 5 and vacated ad interim order granted earlier. The trial court found that without following due process of law, it is not open for the plaintiffs to dispossess the defendant.

3. The said order was taken in appeal by the present opponent by resorting to Order 43 of CPC. The aforesaid appeal was numbered as Civil Miscellaneous Appeal No.10 of 1997. The appellate court allowed the said appeal and injunction was granted in favour of the plaintiffs on the same terms and conditions in which earlier the ad interim relief was granted by the trial court. The aforesaid order of the appellate court is impugned in the revision application at the instance of the defendant.

4. I have considered the judgment of both the courts below and I have also considered the provisions of law and the factual aspects involved in the matter.

5. At the time of admitting this revision application, the learned single Judge (Coram : Y.B. Bhatt, J.) passed the following order on 21st April, 1997 :-

" ... ... ...

Rule.

2. Heard the learned counsel for the respective parties on interim relief. From a plain reading of the plaint and injunction application, it becomes obvious that the plaintiffs have positively asserted that the defendant is a trespasser who continues to occupy the property although he is not authorised in law to do so. Thus the plaintiffs themselves treat the defendant as a trespasser and in occupation of the property in question. It is implied that the actual and physical possession is with the defendant. In the premises, there cannot be any interim relief which would permit dispossession of the defendant. Hence, ad-interim relief granted earlier is hereby confirmed.

3. However, it shall be open to both the parties to approach the trial Court, and in order to bring about a negotiated settlement or a practical working solution on account of consideration of a representation made by the defendant to the plaintiffs, to request the trial court to appoint a commissioner to take custody of the disputed premises for a specific period in order that such a settlement can be arrived at. It shall be open to the trial Court to pass such orders that it may consider necessary on merits and on the facts of the case, bearing in mind the object of the application. Direct Service is permitted.

... ... .... "

The effect of the aforesaid order is that till today, the defendant is in possession of the suit premises. At this stage, it is necessary to consider whether such type of injunction can be granted at all, as, by virtue of granting such injunction, the defendant will be virtually asked to vacate the premises. When the plaintiffs have gone to the court and have prayed for injunction, they are supposed to satisfy whether there is any prima facie case in their favour and the balance of convenience will

lie in whose favour. However, it is not in dispute that the defendant is in physical possession much prior to the filing of the suit. The only natural thing which the plaintiffs were supposed to do was to ask for possession from the court. Unless there is a decree for possession or unless there is a valid and lawful order of possession in favour of the plaintiffs, under the guise of interim injunction, the plaintiffs cannot dispossess the defendant in this manner. Otherwise, in all cases, the plaintiff, without obtaining the possession order, will try to take possession only by virtue of interim order to the effect that the defendant should be prevented from entering the suit premises. It is not open, therefore, for the plaintiffs to resort to short circuit method. The question whether the possession of the defendants is a legal one or not is a different thing. But, when the plaintiffs have approached the Court, the court of law is required to look into the question whether by granting such injunction it will result into evicting the other side without there being any prayer by the plaintiffs. In my view, such injunction could not have been granted by the Court dispossessing the defendant by taking undue advantage of the court's order. Even the plaintiffs have not asked for mandatory injunction, but, by asking prohibitory type of injunction, they can now dispossess the defendant if such injunction is granted in their favour. Looking to the plaint and the prayers made in the application for injunction such type of injunction could never have been granted. The learned trial Judge was absolutely justified in rejecting Application Exhibit 5. The learned appellate Judge has committed an error of jurisdiction and without considering whether the court is competent to grant such prayer or not, if such appeal is allowed, it may ultimately result in dispossessing the defendant from the suit premises. The appellate court has also not properly applied the ratio of the decision in Govindbhai Parshottamdas Patel and others v. New Shorrock Mills, Nadiad, 1984 G.L.H. 266. The appellate Judge has unnecessarily gone into the details of the facts which were not required for deciding Exhibit 5 Application to the effect whether the defendant has resigned from the service, etc. The only question which was required to be considered is whether such type of injunction can be granted at this stage, especially when the plaintiff has ot prayed for any decree for possession in their favour. The plaintiffs are not supposed to take undue advantage of the order below Exhibit 5 for evicting the person who is in possession of the premises. Therefore, the appellate court granted the relief which could not have been granted and has accordingly committed jurisdictional error which is required to be rectified in

this Revision Application which is filed under Section 115 of CPC. It is clarified that it would be open for the plaintiffs to ask for appropriate relief for possession, but, in no case such injunction can ever be granted. At any rate, such interim injunction could never be granted at an interim stage, which would virtually amount to decreeing the entire suit and may result into an order directing eviction of the defendant.

6. The applicant-original defendant, however, is restrained from transferring or alienating the suit premises to anyone during the pendency of the suit in any manner.

7. With the aforesaid direction, this Revision Application is required to be allowed and it is accordingly allowed. Rule is made absolute. The order of the appellate court is set aside and that of the trial court is restored. No costs.

( P.B. Majmudar, J. )

(apj)